

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5310 OF 2016**

Mustafa Ibrahim Nadiadwala & Ors ...Petitioners
Versus
The Sub-Division Officer, Alibaug & Ors ...Respondents

Mr GS Godbole, *with Mohit Goyal, i/b Wadia Ghandy & Co, for the
Petitioner.*
Ms SD Vyas, 'B' Panel Counsel, *for the Respondent-State.*

**CORAM G.S. Patel &
 M.G. Sewlikar, JJ.**
DATED: 8th June 2022

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1. The Writ Petition arises inter alia under the Maharashtra Private Forests (Acquisition) Act 1975 read with the relevant provisions of the Indian Forest Act 1927. The land in question is at Mauje Nanegaon, Taluka Pen District Raigad. There are two plots. The first is old survey No. 61. The second is old survey No. 55.
2. There is an Affidavit in Reply after the Petition was amended. This reply is by the Sub-Divisional Officer of the Pen Sub-Division. Annexed to this reply is a report dated 4th December 2017 of the Deputy Conservative Forest Alibag. Also annexed are copies of some circulars, as also of a notification under Section 35(1) of the

Indian Forest Act and gazette copies in regard to notices under Section 35(3) of the Indian Forest Act.

3. The reason this is immediately relevant is because of the law settled by the Supreme Court in *Godrej & Boyce Manufacturing Company Ltd & Anr v State of Maharashtra & Ors.*¹ Rather than go through a comprehensive list of dates, we will accept Mr Godbole's statement that if, in regard to both plots, there is a Notification under Section 35(1) and also notices under Section 35(3), then nothing survives in the Petition (although the Petitioner may have independent rights elsewhere).

4. At page 143, an annexure to the Affidavit in Reply, we find a schedule annexed to the notification under Section 35(1) of the Indian Forest Act issued by the Maharashtra Government and Gazetted on 6th June 1963. Item 12 of this schedule lists both survey No. 61 and survey No. 55. It is thus clear that there is a Section 35(1) notification in respect of both survey numbers.

5. This then takes us to Section 35(3) and an assessment of whether the required notice was issued thereunder.

6. For completeness we reproduce Section 35 of The Indian Forest Act 1927.

“35. Protection of forests for special purposes. — (1)
The [State Government], may, by notification in the Official Gazette, regulate or prohibit in any forest or waste-land —

¹(2014) 3 SCC 430

(a) the breaking up or clearing of land for cultivation

(b) the pasturing of cattle; or

(c) the firing or clearing of the vegetation;

when such regulation or prohibition appears necessary for any of the following purposes:-

(i) for protection against storms, winds, rolling stones, floods and avalanches;

(ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of land-slips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

(iii) for the maintenance of a water-supply in springs, rivers and tanks;

(iv) for the protection of roads, bridges, railways and other lines of communication;

(v) for the preservation of the public health.

(2) The [State Government] may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the [State Government].”

7. Ms Vyas points out that at pages 138 and 139 are copies of the gazette publication in relation to Section 35(3) notices. Survey No. 61 is mentioned at page 138 and survey No. 55 is mentioned at page 139.

8. This tells us that notices under Section 35(3) were served on the original owners. The notices were preceded as required in law by Section 35(1) of the Indian Forest Act. The decision of the Supreme Court in *Godrej and Boyce* will thus squarely apply. This is not a dispute as to whether the land in question satisfies the definition of a forest. The controversy here is about the vesting of forest land in the State Government under the Maharashtra Act and whether the necessary procedure has been followed. The Supreme Court mandated that if the notice under Section 35(3) of the Forest Act is not served on the property owner, there is no question of that land vesting in the State Government under the Maharashtra Act. Section 35(3) notice is mandatory and it must be served in the manner provided under the Act. There was also a Maharashtra amendment to Section 35 adding sub-Sections (4), (5) and (6) which read thus:

“35. Protection of forests for special purposes. — (1)-(3)

* * *

(4) A notice to show cause why a notification under sub-section (1) should not be made, may require that for any period not exceeding six months, or till the date of the making of a notification, whichever is earlier, the owner of such forest and all persons who are entitled or permitted to do therein any or all of the things, specified in clause (i) of sub-section (1), whether by reasons of any right, title or interest or under any license or contract or otherwise, shall

not, after the date of the notice and for the period or until the date aforesaid, as the case may be, do any or all the things specified in clause (i) of sub-section (1), to the extent specified in the notice.

(5) A notice issued under sub-section (3) shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the service of summons and shall also be published in the manner prescribed by rules.

(6) Any person contravening any requisition made under sub-section (4) in a notice to show cause why a notification under sub-section (1) should not be made shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.”

9. This is relevant because the Supreme Court noted these statutory provisions inter alia in paragraphs 55 to 58 of the Judgment in *Godrej and Boyce*. While doing so the Supreme Court overruled its previous decision in *Chintamani Gajanan Velkar v State of Maharashtra*.²

10. But the facts in the present case as they emerge from the Affidavit in Reply and the Annexures make it abundantly clear that the present case falls squarely within the ambit of that class of matters that have duly received both a notification under Section 35(1) and a notice under Section 35(3) served in the manner contemplated by the statute. The Maharashtra Act deems lands covered by Section 35(1) and 35(3) to be private forests, vide Section

²(2000) 3 SCC 143.

2(f)(ii) and 2(f)(iii). The ‘vesting’ under the Maharashtra Act occurs by operation of statute under Section 3.

11. There is, therefore, no challenge that survives in the present Petition.

12. We clarify however, that this does not mean that the Petitioner is precluded from making an application to the appropriate authority under the Forest Conservation Act 1980 for leave to carry out non forest activity on the two plots in question.

13. Mr Godbole also points out that there is already an order of restoration of land dated 20th March 1980 under Section 22A of the Maharashtra Private Forest Act. We need not examine that aspect of the matter. It goes without saying that the Petitioner will be entitled to the benefits of that order as well.

14. The Petition is disposed of with these observations.

(M.G. Sewlikar, J)

(G. S. Patel, J)